

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ONEWEST BANK, FSB,

Plaintiff,

vs.

TAMARA E. DUTRA; DANIEL  
MALONEY; JIMI DUTRA; and  
DOES 1 to 20, inclusive,

Defendant.

CASE NO. 15cv00915-WQH-JLB

ORDER

HAYES, Judge:

On October 14, 2014, Plaintiff OneWest Bank, FSB commenced this action by filing a Complaint for Unlawful Detainer in San Diego County Superior Court, where it was assigned case number 37-2014-00034883-CL-UD-CTL. (ECF No. 1 at 7). The Complaint alleges that Plaintiff is entitled to possession of real property located at 11962 Dapple Court, San Diego, California 92128. The Complaint asserts a claim for unlawful detainer under California law. On January 20, 2015, Defendants Tamara Dutra, Daniel Maloney, and Jimi Dutra, proceeding *pro se*, filed a notice of removal in Southern District of California Case Number 15cv00110-WQH-JLB. *See* S.D. Case No. 15cv00110-WQH-JLB, ECF No. 1. On January 28, 2015, Plaintiff filed a motion to remand. *Id.* ECF No. 4. On March 10, 2015, the Court issued an Order, granting the motion to remand because Defendants failed to file an opposition. *Id.* ECF No. 7.

On April 24, 2015, Defendants filed a second notice of removal, and a new case number was assigned. (ECF No. 1). The notice of removal pertains to the same


1 Complaint as the notice of removal filed in Case Number 15cv00110-WQH-JLB.

2 A defendant may remove a civil action from state court to federal court based on  
 3 either federal question or diversity jurisdiction. *See* 28 U.S.C. § 1441. “[T]he  
 4 defendant always has the burden of establishing that removal is proper.”  
 5 *Moore-Thomas v. Alaska Airline, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009). “The  
 6 presence or absence of federal-question jurisdiction is governed by the well-pleaded  
 7 complaint rule, which provides that federal jurisdiction exists only when a federal  
 8 question is presented on the face of the plaintiff’s properly pleaded complaint.... [T]he  
 9 existence of a defense based upon federal law is insufficient to support jurisdiction.”  
 10 *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002) (quotation and  
 11 citation omitted). “The removal statute is strictly construed, and any doubt about the  
 12 right of removal requires resolution in favor of remand.” *Moore-Thomas*, 553 F.3d at  
 13 1244 (citation omitted).

14 The sole basis for federal jurisdiction stated in the notice of removal is that  
 15 Defendants have a defense to the Complaint based upon Plaintiff’s alleged failure to  
 16 comply with a federal statute. However, “the existence of a defense based upon federal  
 17 law is insufficient to support [federal] jurisdiction.” *Wayne*, 294 F.3d at 1183. The  
 18 Court finds that the notice of removal does not adequately state a basis for federal  
 19 subject-matter jurisdiction.

20 Pursuant to 28 U.S.C. section 1447(c), this action is REMANDED for lack of  
 21 subject-matter jurisdiction to the Superior Court of California for the County of San  
 22 Diego, where it was originally filed and assigned case number 37-2014-00034883-CL-  
 23 UD-CTL.

24 DATED: May 13, 2015

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 26 **WILLIAM Q. HAYES**  
 27 United States District Judge  
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